

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI

UNITED STATES OF AMERICA

Plaintiff,

-vs-

Criminal Action No.
19-00315-01/02, 04, 08, 10-CR-W-DGK

LADELE D. SMITH (1),
ROY O. FRANKLN, JR. (2),
DAVID J. DUNCAN, IV (4),
CORY T. BROWN (8), and
GARY O. TOOMBS (10).

Defendants.

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

The following matters were discussed and action taken during the pretrial conference:

PENDING CHARGES: The Superseding Indictment (Doc. 234) contains the following charges:

Defendant Smith: Counts 1- 3, 6-18
Defendant Franklin: Counts 1-2, 6-8, 19-24
Defendant Duncan: Counts 1, 6-7, 25-26, 35-39
Defendant Brown: Count 1
Defendant Toombs: Counts 1-2, 8

TRIAL COUNSEL:

Government: Ashleigh Ragner & Mary Kate Butterfield
Case Agent: Special Agent Doug McKelway (FBI)
Defendant Smith: Angela Hasty
Defendant Franklin: Justin Johnston
Defendant Duncan: Joshua Adams, Quinn Michaelis & Vincent Rivera
Defendant Brown: Ellen Michaels, Lisa Dwyer & Marilyn Keller
Defendant Toombs: Lance Haley

OUTSTANDING MOTIONS:

Defendant Smith: *Daubert* motion to exclude testimony of Timothy Flohrschutz (Doc. 640)
Motion to suppress wiretap evidence (Doc. 667)
Motion to suppress social media records (Doc. 668)
Defendant Franklin: *Daubert* motion to exclude testimony of Timothy Flohrschutz (Doc. 611)
Motion to suppress wiretap evidence (Doc. 647)
Motion to suppress social media records (Doc. 648)
Defendant Duncan: None

Defendant Brown: Motion to suppress (Doc. 593), *R&R filed 7/20/22 (Doc. 694)*
Motion in limine (Doc. 700)
Defendant Toombs: None

ANTICIPATED MOTIONS: All defendants plan to file motions in limine.

TRIAL WITNESSES:

Government: 60 with stipulations; 80 without stipulations
Defendant Smith: 1-5 witnesses; Defendant will not testify
Defendant Franklin: 5-8 witnesses; Defendant may testify
Defendant Duncan: 1-3 witnesses; Defendant may testify
Defendant Brown: 1-2 witnesses; Defendant will not testify
Defendant Toombs: 1-3 witnesses; Defendant may testify

TRIAL EXHIBITS:

Government: 700 exhibits
Defendant Smith: 15 exhibits
Defendant Franklin: 20-30 exhibits
Defendant Duncan: 20-30 exhibits
Defendant Brown: 10-20 exhibits
Defendant Toombs: 10 exhibits

DEFENSES:

Defendant Smith:
☒ defense of general denial
☐ defenses of general denial and _____

Defendant Franklin:
☒ defense of general denial
☐ defenses of general denial and _____

Defendant Duncan:
☒ defense of general denial
☐ defenses of general denial and _____

Defendant Brown:
☒ defense of general denial
☐ defenses of general denial and _____

Defendant Toombs:
☒ defense of general denial
☐ defenses of general denial and _____

POSSIBLE DISPOSITION:

Defendant Smith:

(x) Definitely for trial

() Motion to continue to be filed

() Possibly for trial

() Likely a plea will be worked out

Defendant Franklin:

(x) Definitely for trial

() Motion to continue to be filed

() Possibly for trial

() Likely a plea will be worked out

Defendant Duncan:

(x) Definitely for trial

() Motion to continue to be filed

() Possibly for trial

() Likely a plea will be worked out

Defendant Brown:

(x) Definitely for trial

() Motion to continue to be filed

() Possibly for trial

() Likely a plea will be worked out

Defendant Toombs:

(x) Definitely for trial

() Motion to continue to be filed

() Possibly for trial

() Likely a plea will be worked out

TRIAL TIME: 3 weeks

Government's case including jury selection: 2 weeks

Defendant Smith's case: ½ - 1 day

Defendant Franklin's case: ½ - 1 day

Defendant Duncan's case: ½ day

Defendant Brown's case: 1 day

Defendant Toombs' case: ½ day

STIPULATIONS: The Government plans to propose stipulations regarding chemistry, business records, chain of custody, foundation only as it pertains to wire intercepts, and foundation as to all exhibits generally.

Defendant Smith:

(x) not likely

() not appropriate

() likely as to:

() chain of custody

() chemist's reports

() prior felony conviction

() interstate nexus of firearm

() other:

Defendant Franklin:

- ☐ not likely
- ☐ not appropriate
- ☒ likely as to:
 - ☐ chain of custody
 - ☐ chemist's reports
 - ☐ prior felony conviction
 - ☐ interstate nexus of firearm
 - ☒ foundation

Defendant Duncan:

- ☐ not likely
- ☐ not appropriate
- ☒ likely as to:
 - ☐ chain of custody
 - ☐ chemist's reports
 - ☐ prior felony conviction
 - ☐ interstate nexus of firearm
 - ☒ foundation

Defendant Brown:

- ☐ not likely
- ☐ not appropriate
- ☒ likely as to:
 - ☐ chain of custody
 - ☐ chemist's reports
 - ☐ prior felony conviction
 - ☐ interstate nexus of firearm
 - ☒ foundation

Defendant Toombs:

- ☐ not likely
- ☐ not appropriate
- ☒ likely as to:
 - ☐ chain of custody
 - ☐ chemist's reports
 - ☐ prior felony conviction
 - ☐ interstate nexus of firearm
 - ☒ foundation

UNUSUAL QUESTIONS OF LAW: None

FILING DEADLINES:

Witness and Exhibit Lists:

Government: August 8, 2022

Defense: August 8, 2022

Counsel are requested to list witnesses in alphabetical order on their witness list.

Exhibit Index, Voir Dire, Jury Instructions: August 8, 2022

Jury instructions must comply with Local Rule 51.1

Motions in Limine: August 8, 2022

TRIAL SETTING: This case is specially set before Judge Kays August 29, 2022 through September 16, 2022 (Doc. 605)

OTHER:

() A _____-speaking interpreter is required.

() Other assistive devices: _____

IT IS SO ORDERED.

/s/ Jill A. Morris
JILL A. MORRIS
United States Magistrate Judge